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Library News

Comments?

The Law Library invites your comments and suggestions for improving our newsletter or any of the other services provided. You may contact us directly at (602) 506-3461. You may also submit your comments to us via our email address at services@sccl.maricopa.gov.

Database Review

If you're searching for articles relating to business and management, you may want to try *ABI/Inform*. This database provides abstracts, and, in some cases, full text of articles from United States and international professional publications, academic journals and trade magazines, covering over 1,800 sources dating back to 1971. Content is updated weekly.

The subject matter includes but is not limited to such topics as computers, health care, human resources, insurance, public administration, real estate, and taxation. A unique feature of *ABI/Inform* is that it allows you to limit your search results to only those titles actually owned by the Law Library. You can also rank your results by either date or relevance.

You can access the database in the Library by simply clicking on the *ABI/Inform* icon. It is also available remotely by clicking on "Database Login" link located near the top of the Law Library web page. For remote access, you will need a Law Library card.

Do You Know?

Find out how much you know about international law.

1. In what country is it against the law to wash your car on Sunday, hang out clothes to dry on Sunday, and mow your lawn on Sunday?
2. What country requires you to have a license to keep a lunatic?
3. What country has a law that says no pig may be addressed as Napoleon by its owner?
4. What country forbids a person from roaming the streets wearing black clothes, felt shoes, and black shoe polish on one's face?
5. In what Canadian province is one, upon release from prison, given a handgun with bullets, and a horse "so you can ride out of town?"

On the Internet

Violent Victimization as a Risk Factor for Violent Offending Among Juveniles

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (December 2002)

<http://www.ncjrs.org/pdffiles1/ojjdp/195737.pdf>

Juveniles, as a group, suffer a high risk of becoming victims of violent crimes. As a group, they also commit violent offenses at a higher than average rate. Is there a correlation? Does one influence the other, or are these mutually exclusive findings?

The Office of Juvenile Justice and Delinquency Prevention recently reported on an extensive study of 5,003 juveniles over a two-year period. The juveniles in the National Longitudinal Study of Adolescent Health ranged in age from 11-17, and the study addressed three issues:

- Is victimization a risk factor for violent offenders?
- What explains the relationship? Do the same factors predict the behavior?
- Does drug use affect this relationship?

Violent Victimization as a Risk Factor for Violent Offending Among Juveniles, p.6

Table 8: Factors Predicting Violent Offending in Year 2

Predictor*	Logistic Coefficient†	Odds Ratio‡
Violent offending in year 1	1.39 (.09)	4.01
Violent victimization in year 1	0.86 (.11)	2.36
Male	0.71 (.11)	2.03
Consistent drug user	0.62 (.16)	1.86
New alcohol user	0.59 (.15)	1.80
Consistent alcohol user	0.56 (.13)	1.75
New drug user	0.36 (.17)	1.43
More physically developed	0.30 (.10)	1.35
Depression	0.23 (.11)	1.26
Support from significant others	-0.26 (.09)	0.77
Household socioeconomic status	-0.19 (.06)	0.83

Note: See sidebar on page 8 for methodological notes.

* Only significant ($p < .05$) predictors are reported here. The sidebar on page 8 includes a complete list of the variables analyzed.

† The logistic coefficient represents the effect of a given predictor variable (e.g., violent offending in year 1) on the log odds of the outcome (i.e., violent offending in year 2). Positive numbers indicate risk factors; negative numbers indicate protective factors. Standard errors are in parentheses.

The study found that victims of violence were significantly more likely than nonvictims to become violent offenders,

and that juveniles who committed a violent offense in the first year of the study were significantly more likely to commit a violent offense in the second year. This particular correlation was prevalent, regardless of age, gender, race, and level of physical development or drug use.

Risk factors for juveniles, who were both victims and violent offenders, included previous violent victimization and offending, drug or alcohol use, being male, depression and a high level of physical development. The study did determine one critical preventive factor. This was support. Support from a significant person in their lives, such as a friend, a parent, or a teacher.

Since it was also found that juveniles who were depressed suffered a higher rate of victimization, providing counseling and victim services could prove to be a valid method of prevention. In addition, the study indicated that protecting juveniles from violent crime, and providing drug treatment, mentoring, parenting and anger management programs would also be successful and positive interventions.

Recent Arizona Cases

Stanley v. McCarver

1 CA-CV 02-0328

(February 25, 2003)

On an issue that has “been addressed differently among courts nationwide,” the Arizona Court of Appeals has unanimously held that doctors who perform pre-employment screening for companies have a duty to disclose any problems they discover to the person being examined.

Christine Stanley was required by a prospective employer to have a chest x-ray. The doctor who read and interpreted the x-ray reported “implications for pneumonia” along with “nodule density overlaying the right sixth rib...” Stanley was never informed of the report and was later diagnosed with lung cancer. The plaintiff contended, in her suit for negligence, that had she known of her condition at the time of her pre-

employment screening x-ray, she could have sought treatment sooner.

Writing for the court, Judge Ehrlich, said that normally such a report would have been forwarded to the referring physician. In this case since there was not a referring physician, the responsibility fell to the radiologist. She wrote that "this imposition of responsibility protects the person being examined who reasonably and foreseeably relies on the physician...to disclose potentially serious threats to the person's health."

From Other Jurisdictions

Smith v. Doe

U. S. Supreme Court, No. 01-729
(March 5, 2003)

Smith v. Doe is a case that challenged the Alaska Sex Offender Registration Act enacted in 1994. The Alaska act requires any sex offender to register with the Alaska Department of Public Safety within 30 days before their release from prison. If a sex offender is not incarcerated, they must, "within a working day of his conviction or of entering the State," register as well. The Alaska Department of Public Safety publishes sex offender pictures on the Internet along with the offender's name; any aliases used; address; a physical description; driver's license number; VIN number; place of employment; date of birth; date of crime and place of conviction as well as length and conditions of the sentence; and whether or not the offender has complied with the Act. The provisions of the Act that require registration and notification are retroactive and also oblige the offender to submit "quarterly verifications and notify the authorities of any changes."

The *Smith* case involved two sex offenders who were convicted of sexual abuse of a minor prior to the establishment of the Act. Both did their time and completed a sex offender rehabilitation program. The two argued that they had already been punished for their crime and making them

register and post their information on the Internet violated the *Ex Post Facto* Clause of the United States Constitution.

The Supreme Court began by saying this case was the first time they considered a claim that a sex offender registration and notification law constituted retroactive punishment forbidden by the *Ex Post Facto* Clause" but it was not the first time they had to deal with issues of legislative intent. Matters regarding legislative intent are well established. In considering legislative intent, courts must look to the "statute's text and its structure to determine the legislative objective." In reviewing the intent of the Alaska legislature, the Court concluded that nothing in the statute suggested that the legislature was trying to do anything more than protect the public from harm.

In addressing Alaska's use of the Internet as a means of community notification, the Court noted that the "Act does not specify the means by which the registry information must be made public." Just because an offender may be subjected to public shame and humiliation, the underlying purpose of the Act is to protect the public not bring shame to the offender. Furthermore, Alaska's site does not all allow the public a manner in which to shame the offender. For example, there is no way for the public to add comments to any of the postings. Writing for the majority, Justice Kennedy said "[O]ur system does not treat dissemination of information of truthful information in furtherance of a legitimate governmental objection as punishment."

Lamb v. Rizzo

U.S. District Court, District of Kansas, No. 02-1282-JTM
(January 31, 2003)

Thomas Lamb kidnapped and murdered a 24-year-old woman in 1969. One month later, in January of 1970, he kidnapped an 18-year-old woman and demanded ransom from her parents. The police staked out the drop off scene and a high-speed chase ensued. Lamb was subsequently apprehended, convicted of kidnapping and murder, and sentenced to life. After his

arrest and the discovery of a third woman, an investigation proved that a fingerprint lifted from the third woman's her car belonged to the defendant.

In 2001, Tony Rizzo was a reporter for the *Kansas City Star* who wrote a couple of articles about the Lamb case as Lamb was preparing for an upcoming parole hearing. Mr. Rizzo's article, among other things, stated, "he was arrested after the chase and shootout that left one police officer seriously injured." He also wrote that the defendant dressed up as a woman and prowled shopping centers looking for victims. The reporter also stated that Lamb was convicted of both "kidnapping and rape."

Lamb's request for parole was denied. He brought an action for libel against Rizzo. Lamb argued that "he was never charged with rape as to either of his victims," and while an officer may have been shot, "the shot came from another officer and was in any event, not 'life threatening'." He also stated that while he did abduct on victim from a shopping center, he "was fully dressed as a male at that time."

Rizzo filed a motion to dismiss on the grounds that "the plaintiff's reputation has been so demolished by his own actions that he cannot sustain an action for libel." Rizzo's motion was granted because of the libel-proof doctrine. The Court wrote that "essentially, the argument is that Lamb is held in such contempt by the community that he could not have suffered any damage as the result of the defendant's two articles," and "If there is little or no harm to a plaintiff's already low reputation, then the statements are not actionable."

It is interesting to note that in the parole hearing, Lamb argued that he had not "committed a new crime in over 15 years" and several people had "submitted recommendations for his parole." The Court's response is almost comical. "If Lamb has not committed any recent offenses against the public, it is likely due to the fact that he has been isolated from society by the imposition of three consecutive life

sentences."

In the News

On March 8th, the Arizona Republic ran a story about possible contamination of evidence in the Phoenix Police Department's crime lab. "More than 50 incidents" from March to October of 2002 were reported in a room that is used to dry bloody evidence. Defense attorneys are asking for a complete audit of police records during that time to determine if any of the DNA is tainted. Tainted DNA would be a "big deal" in a murder case, especially if that was the only physical evidence available.

The crime lab admits that while the possibility of contaminated evidence is "extremely low," they do acknowledge that it is something that cannot be ignored. In the event allegedly contaminated evidence is admitted, it would be up to the prosecutor to show that there was no likelihood of contamination. After that, judges and juries will be the ones to decide how seriously to take the reports and the challenges to them.

Recently another newspaper (<http://www.dfw.com/mld/dfw/news/state/5364694.htm>) reported that the Houston crime lab is the worst in the country, but similar troubles are evident in other crime laboratories. Standards are often lax or nonexistent, technicians are poorly trained and defense lawyers often have no money to hire their own experts. The inadequacies in the Houston crime lab are especially troubling because Houston is located in Harris County, which sends more people to death row than any other county in the nation.

To find out more about DNA evidence, its preservation and use at trial look at these selected websites.

Phoenix DNA Evidence Under Fire
<http://www.azcentral.com/specials/special21/articles/0308contamination08.html>

President's Initiative on DNA, *Advancing Justice Through DNA Technology* (March 2003)
http://www.usdoj.gov/ag/dnapolicybook_cov.htm.

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<http://www.ojp.usdoj.gov/nij/pubs-sum/199425.htm>

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<http://www.ojp.usdoj.gov/bjs/abstract/sdnacl01.htm>

Houston Police Online, Crime Lab Division
http://www.ci.houston.tx.us/departments/police/crime_lab.htm

Article Review

Special Problems for Specialty Courts

Wendy N. Davis, 89 *ABA Journal* 32 (February 2003).

On Saturday, July 15, 1989, eighty Vietnam veterans gathered in the field of a San Diego High School to surrender to a municipal court judge for failing to appear in court on charges that ranged from sleeping on sidewalks to drinking in public. The vets wanted to "come clean and resolve their unfinished business with the law."

With this mass surrender came the first "homeless court" in the land. Since then homeless courts have become part of a growing specialty of the judicial system. Other types of specialized courts include drug courts, mental health courts and domestic violence courts. Traditionally, courts handling limited matters include bankruptcy, immigration, military, and small claims. The difference in today's "boutique courts" is that they combine social work with the law and dispense therapeutic jurisprudence.

Part of the drive to establish specialty courts comes from "increased efficiencies that come when a judge develops expertise by

repeatedly presiding over the same kind of case, becoming familiar with the underlying legal and social issues." The argument is that some defendants need treatment rather than incarceration and the cost for treatment is much lower than that for incarceration. Prosecutors, however, are beginning to challenge the effectiveness of drug courts,

Davis discusses, in length, the country's first drug court, which began in Dade County, Florida, in 1989. With the exception of New Hampshire and Vermont, every state now has some form of drug court. The biggest source of contention with drug courts is that defendants are required to plead guilty in order to enter the program. Defense attorneys are frustrated by the guilty plea requirement, because they are not allowed to have the opportunity to fight the charges against their client. They complain that forcing a defendant to plead guilty means that these courts have become more punitive than rehabilitative.

The drug court experience led to the establishment of mental health courts. Mental health court opponents argue that mentally ill defendants shouldn't have to plead guilty in order to get treatment. Critics also argue that those who have actually been arrested will end up at the front of the line for treatment thus forcing persons who are equally as ill, but not in trouble, to suffer in silence. A secondary problem with these courts is that treatment is not always successful.

A third kind of specialty court established in the last few years is the domestic violence court. Domestic violence courts present the "most problems with the least benefit." While drug and mental health courts are focused on treatment rather than incarceration, once defendants enter domestic violence courts the momentum toward incarceration, because of the desire to protect the victim, is so strong that almost nothing else will be considered.

Despite concerns, lawyers generally agree that specialized courts are here to stay. These types of "problem-solving, focused

courts ought to populate the landscape more densely."

Book Review

Community Association Law in Arizona

Scott B. Carpenter
State Bar of Arizona 2003

Do you live in a condominium? Do you live in a "planned community?" Maybe the easier question to ask is do you live under the influence of a "homeowners' association?" Ask that question in Arizona, you might as well be asking if you simply LIVE in Arizona.

Increasingly, Arizona has become a community of "planned communities." It is difficult to purchase a new home in the metropolitan Phoenix area without finding oneself in a "planned community." But what is a "planned community?" As a homeowner in a "planned community" or condominium, what rights do I have? Until recently, it has been difficult to pinpoint exactly what HOA's may do or not do. Until recently, that is.

Scott Carpenter, an attorney in Tempe who specializes in representing condominium and planned community associations in Arizona, has provided us, the reader, with an authoritative book on community association law. *Community Association Law in Arizona* is a well-organized book dealing with the Arizona statutes and common law dealing with condominiums and HOA's.

The book is easy to read and fully incorporates and explains the statutes and case law. With respect to meetings, how do the statutes address this? What are planned community associations supposed to do in this regard? How do statutes regulate condominiums? Can planned community associations make assessments? How does one remove a member of the board? Questions such as these have plagued members of associations for quite some time. Finally, we may be able to provide some answers.

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Do You Know? Answers

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2. England
3. France
4. Australia
5. Alberta

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